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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 ARLIN POTTS,
12 Plaintiff,
13 v.
14 TRS RECOVERY SERVICES, INC.,
15 Defendants.

Case No.: 2:18-cv-08197-ODW (ASx)
Magistrate Judge
Hon. Alka Sagar

PROTECTIVE ORDER

Complaint Filed: 09/21/2018

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does
7 not confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited
9 information or items that are entitled to confidential treatment under the applicable
10 legal principles. The parties further acknowledge, as set forth in Section 12.3, below
11 that this Stipulated Protective Order does not entitle them to file confidential
12 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
13 followed and the standards that will be applied when a party seeks permission from
14 the court to file material under seal.

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve trade secrets, and other valuable research,
17 development, commercial, technical and/or proprietary information for which special
18 protection from public disclosure and from use for any purpose other than prosecution
19 of this action is warranted. Such confidential and proprietary materials and
20 information consist of, among other things, confidential business or financial
21 information, information regarding confidential business practices, or other
22 confidential research, development, or commercial information, information otherwise
23 generally unavailable to the public, or which may be privileged or otherwise protected
24 from disclosure under state or federal statutes, court rules, case decisions, or common
25 law. The confidential documents that TRS Recovery Services, Inc. (“TRS”) intends
26 to produce include the following: TRS’ debt collection policies and procedures, TRS
27 debt collection training modules and debt collection call scripts and information
28 technology regarding same (collectively, the “CONFIDENTIAL” materials).

1 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
2 disputes over confidentiality of discovery materials, to adequately protect information
3 the parties are entitled to keep confidential, to ensure that the parties are permitted
4 reasonable necessary uses of such material in preparation for and in the conduct of
5 trial, to address their handling at the end of the litigation, and serve the ends of justice,
6 a protective order for such information is justified in this matter. It is the intent of the
7 parties that information will not be designated as confidential for tactical reasons and
8 that nothing be so designated without a good faith belief that it has been maintained in
9 a confidential, non-public manner, and there is good cause why it should not be part of
10 the public record of this case. More specifically, the CONFIDENTIAL documents
11 and materials described more fully above provide TRS with, among other things, a
12 competitive advantage in the debt collection business and TRS would suffer a
13 substantial hardship if the CONFIDENTIAL documents and materials are disclosed to
14 the public in as much as these materials would provide TRS' competitors with an
15 unfair opportunity to compete with TRS. If information about TRS' policies and
16 procedures regarding its debt collection services is made publicly available it can also
17 be obtained and used by individuals and businesses that engage in debt collection
18 fraud on the public and TRS, all of which will be very damaging to TRS from a
19 financial and reputational standpoint and to the public as a whole.

20 2. DEFINITIONS

21 2.1 Action: *Arlin Potts v. TRS Recovery Services, Inc.* (Case No.: 2:18-cv-
22 08197-ODW-AS).

23 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
24 information or items under this Order.

25 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it
26 is generated, stored or maintained) or tangible things that qualify for protection under
27 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
28 Statement.

1 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
2 support staff).

3 2.5 Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 “CONFIDENTIAL.”

6 2.6 Disclosure or Discovery Material: all items or information, regardless of the
7 medium or manner in which it is generated, stored, or maintained (including, among
8 other things, testimony, transcripts, and tangible things), that are produced or
9 generated in disclosures or responses to discovery in this matter.

10 2.7 Expert: a person with specialized knowledge or experience in a matter
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
12 expert witness or as a consultant in this Action.

13 2.8 House Counsel: attorneys who are employees of a party to this Action.
14 House Counsel does not include Outside Counsel of Record or any other outside
15 counsel.

16 2.9 Non-Party: any natural person, partnership, corporation, association, or
17 other legal entity not named as a Party to this action.

18 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
19 this Action but are retained to represent or advise a party to this Action and have
20 appeared in this Action on behalf of that party or are affiliated with a law firm which
21 has appeared on behalf of that party, and includes support staff.

22 2.11 Party: any party to this Action, including all of its officers, directors,
23 employees, consultants, retained experts, and Outside Counsel of Record (and their
24 support staffs).

25 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
26 Discovery Material in this Action.

27 2.13 Professional Vendors: persons or entities that provide litigation support
28 services (e.g., photocopying, videotaping, translating, preparing exhibits or

demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial shall be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection

1 only those parts of material, documents, items, or oral or written communications that
2 qualify so that other portions of the material, documents, items, or communications
3 for which protection is not warranted are not swept unjustifiably within the ambit of
4 this Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (e.g., to unnecessarily encumber the case development process or to impose
8 unnecessary expenses and burdens on other parties) may expose the Designating Party
9 to sanctions.

10 If it comes to a Designating Party's attention that information or items that it
11 designated for protection do not qualify for protection, that Designating Party must
12 promptly notify all other Parties that it is withdrawing the inapplicable designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
15 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
16 must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents,
19 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
20 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
21 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
22 portion or portions of the material on a page qualifies for protection, the Producing
23 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
24 markings in the margins).

25 A Party or Non-Party that makes original documents available for inspection
26 need not designate them for protection until after the inspecting Party has indicated
27 which documents it would like copied and produced. During the inspection and before
28 the designation, all of the material made available for inspection shall be deemed

1 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
2 copied and produced, the Producing Party must determine which documents, or
3 portions thereof, qualify for protection under this Order. Then, before producing the
4 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
5 to each page that contains Protected Material. If only a portion or portions of the
6 material on a page qualifies for protection, the Producing Party also must clearly
7 identify the protected portion(s) (e.g., by making appropriate markings in the
8 margins).

9 (b) for testimony given in depositions that the Designating Party identify the
10 Disclosure or Discovery Material on the record, before the close of the deposition all
11 protected testimony.

12 (c) for information produced in some form other than documentary and for any
13 other tangible items, that the Producing Party affix in a prominent place on the
14 exterior of the container or containers in which the information is stored the legend
15 “CONFIDENTIAL.” If only a portion or portions of the information warrants
16 protection, the Producing Party, to the extent practicable, shall identify the protected
17 portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
19 designate qualified information or items does not, standing alone, waive the
20 Designating Party’s right to secure protection under this Order for such material.
21 Upon timely correction of a designation, the Receiving Party must make reasonable
22 efforts to assure that the material is treated in accordance with the provisions of this
23 Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the court’s Scheduling
27 Order.

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1 6.2 Meet and Confer The Challenging Party shall initiate the dispute resolution
2 process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party, Frivolous challenges, and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 exposit the Challenging Party to sanctions. Unless the Designating Party has waived
7 or withdrawn the confidentiality designation, all parties shall continue to afford the
8 material in question the level of protection to which it is entitled under the Producing
9 Party's designation until the court rules on the challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is
12 disclosed or produced by another Party or by a Non-Party in connection with this
13 Action only for prosecuting, defending, or attempting to settle this Action. Such
14 Protected Material may be disclosed only to the categories of person and under the
15 conditions described in this Order. When the Action has been terminated, a Receiving
16 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

17 Protected Material must be stored and maintained by a Receiving Party at a
18 location and in a secure manner that ensures that access is limited to the persons
19 authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
21 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
22 may disclose any information or item designated "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to
25 disclose the information for this Action;

26 (b) the officers, directors, and employees (including House Counsel) of the
27 Receiving Party to whom disclosure is reasonably necessary for this Action;

28 ///

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this Action and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) professional jury or trial consultants, mock jurors, and Professional
7 Vendors to whom disclosure is reasonably necessary for this Action and who have
8 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses, in the
12 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
13 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
14 not be permitted to keep any confidential information unless they sign the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
16 agreed by the Designating Party or ordered by the court. Pages of transcribed
17 deposition testimony or exhibits to depositions that reveal Protected Material may be
18 separately bound by the court reporter and may not be disclosed to anyone except as
19 permitted under this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting personnel, mutually
21 agreed upon by any of the parties engaged in settlement discussions.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
23 PRODUCED IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation
25 that compels disclosure of any information or items designated in this Action as
26 “CONFIDENTIAL,” that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall
28 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or
3 order is subject to this Protective Order. Such notification shall include a copy of this
4 Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by
6 the Designating Party whose Protected Material may be affected.

7 (d) If the Designating Party timely seeks a protective order, the Party served
8 with the subpoena or court order shall not produce any information designated in this
9 action as “CONFIDENTIAL” before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action to
14 disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a Non-
18 Party in this Action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party that
27 some or all of the information requested is subject to a confidentiality agreement with
28 a Non-Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
2 Order in this Action, the relevant discovery request(s), and a reasonably specific
3 description of the information requested; and

4 (3) make the information requested available for inspection by the Non-Party, if
5 requested.

6 (c) If the Non-Party fails to seek a protective order from this court within 14 days
7 of receiving the notice and accompanying information, the Receiving Party may
8 produce the Non-Party's confidential information responsive to the discovery request.
9 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
10 any information in its possession or control that is subject to the confidentiality
11 agreement with the Non-Party before a determination by the court. Absent a court
12 order to the contrary, the Non-Party shall bear the burden and expense of seeking
13 protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
18 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
19 all unauthorized copies of the Protected Material, (c) inform the person or persons to
20 whom unauthorized disclosures were made of all the terms of this Order, and (d)
21 request such person or persons to execute the "Acknowledgment and Agreement to Be
22 Bound" that is attached hereto as Exhibit A.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection,
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
3 parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement in the stipulated protective order submitted to
6 the court.

7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information in
20 the public record unless otherwise instructed by the court.

21 13. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within 60
23 days of a written request by the Designating Party, each Receiving Party must return all
24 Protected Material to the Producing Party or destroy such material. As used in this
25 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected
27 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
28 must submit a written certification to the Producing Party (and, if not the same person

1 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
2 category, where appropriate) all the Protected Material that was returned or destroyed
3 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
4 compilations, summaries or any other format reproducing or capturing any of the
5 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
6 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
7 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
8 work product, and consultant and expert work product, even if such materials contain
9 Protected Material. Any such archival copies that contain or constitute Protected
10 Material remain subject to this Protective Order as set forth in Section 4
11 (DURATION).

12 14. Any violation of this Order may be punished by any and all appropriate
13 measures including, without limitation, contempt proceedings and/or monetary
14 sanctions.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 KIMMEL & SILVERMAN, P.C.
17 DATED 3/20/2019

18 /s/Amy L.B. Ginsburg
19 Amy L. B. Ginsburg, Esq.
20 Attorney for Plaintiff
21 ARLIN POTTS

22 FOX ROTHSCHILD LLP

23 DATED: 3/20/2019

24 /s/Joshua Horn
25 Joshua Horn, Esq. (*Pro Hac Vice*)
26 Rom Bar-Nissims
27 Attorneys for Defendant
28 TRS RECOVERY SERVICES, INC.
FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED March 21, 2019

/ s /
Honorable Alka Sagar
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____, of _____, declare under penalty of perjury
4 that I have read in its entirety and understand the Stipulated Protective Order that was
5 issued by the United States District Court for the Central District of California
6 on [date] in the case of *Arlin Potts v. TRS Recovery Services, Inc.* (Case No.: 2:18-cv-
7 08197-ODW-AS). I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply
9 could expose me to sanctions and punishment in the nature of contempt. I solemnly
10 promise that I will not disclose in any manner any information or item that is subject to
11 this Stipulated Protective Order to any person or entity except in strict compliance with
12 the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for
14 the Central District of California for the purpose of enforcing the terms of this
15 Stipulated Protective Order, even if such enforcement proceedings occur after
16 termination of this action. I hereby appoint _____ of
17 _____ as my California agent for service of process in connection
18 with this action or any proceedings related to enforcement of this Stipulated Protective
19 Order.

20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed Name: _____

24
25 Signature: _____
26
27
28